

PROPOSED REVISIONS TO THE UNIFORM JURY INSTRUCTIONS FOR CRIMINAL CASES

The Committee on Uniform Jury Instructions for Criminal Cases is considering whether to recommend proposed amendments to the Uniform Jury Instructions—Criminal for the Supreme Court's consideration. If you would like to comment on the proposed amendments set forth below before they are submitted to the Court for final consideration, you may do so by either submitting a comment electronically through the Supreme Court's web site at <http://nmsupremecourt.nmcourts.gov/> or sending your written comments to:

Kathleen J. Gibson, Clerk
New Mexico Supreme Court
P.O. Box 848
Santa Fe, New Mexico 87504-0848

Your comments must be received by the Clerk on or before September 20, 2010, to be considered by the Court.

14-931. Criminal sexual contact of a minor in the [third] [second] degree; use of physical force or physical violence; aided or abetted by another; essential elements.

For you to find the defendant guilty of criminal sexual contact of a minor when aided or abetted by another [as charged in Count ____]¹, the state must prove to your satisfaction beyond a reasonable doubt each of the following elements of the crime:

1. The defendant²
[touched or applied force to the [unclothed] _____³ of _____
(*name of victim*);]
[OR]
[caused _____ (*name of victim*) to touch the _____³ of the defendant;]
2. The defendant used physical force or physical violence;
3. The defendant acted with the help or encouragement of one or more persons;
4. _____ (*name of victim*) was at least thirteen (13) but less than eighteen (18) years old;
- [5. The defendant's act was unlawful;]⁴
6. This happened in New Mexico on or about the _____ day of _____, _____.

USE NOTE

1. Insert the count number if more than one count is charged.
2. Use only the applicable alternatives.
3. Name one or more of the following parts of the anatomy touched: "buttock", "breast", "groin", "anus", "mons pubis", "penis", "testicles", "mons veneris", "vulva" or "vagina." When definitions are provided in Instruction 14-981 NMRA, they must be given after this instruction; otherwise, no definition need be given unless the jury requests one.

4. Use the bracketed element if the evidence raises a genuine issue of the unlawfulness of the defendant's actions. If this element is given, UJI 14-132 NMRA, "unlawful defined", must be given after this instruction.

[As amended, effective January 20, 2005; as amended by Supreme Court Order No. _____, effective _____.]

Committee Commentary. — *See* Section 30-9-13A(2)(c) NMSA 1978: third degree felony.

Four separate instructions have been prepared for criminal sexual contact of a minor when the perpetrator is aided or abetted by one or more persons. UJI 14-931 (physical force or physical violence), UJI 14-932 (threats) and UJI 14-933 (unconscious, etc.) contain separate definitions for "force or coercion." 30-9-10A NMSA 1978.

UJI 14-931, 14-932, 14-933 and 14-934 are the same as UJI 14-921, 14-922, 14-923 and 14-924, respectively, with the additional element of "aided or abetted."

UJI 14-934 combines UJI 14-931, 14-932 and 14-933 with the three definitions of "force or coercion" set out in the alternative. If there is evidence of more than one type of force or coercion, this instruction may be used. However, in some circumstances the individual and particularized uniform jury instructions may be more clear and therefore preferable. The court has discretion as to which instruction should be given for these essential elements.

See the commentary to UJI 14-910 for a discussion of the element of "aided or abetted."

See commentaries to UJI 14-902, 14-903 and 14-904 for a discussion of each of the definitions of "force or coercion."

See also the commentary to UJI 14-921.
